



BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, Tennessee 37201-3300

615 214-6301
Fax 615 214-7406

October 25, 1999

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RECEIVED
Gay M. Hicks
General Counsel

1999 OCT 25 PM 3 49

EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*
Docket No. 99-00430

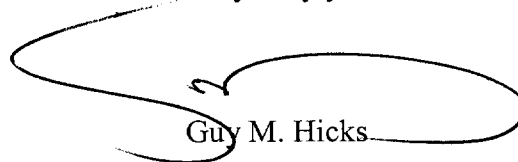
Dear Mr. Waddell:

Enclosed are the original and thirteen copies of rebuttal testimony on behalf of BellSouth Telecommunications, Inc.:

David A. Coon
Keith Milner
Alphonso J. Varner
William Taylor
Ronald M. Pate
Daonne Caldwell

Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH:ch
Enclosure

FILE

CERTIFICATE OF SERVICE


I hereby certify that on October 25, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

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Gary Hotvedt, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500

- ☒ Hand
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- ☐ Overnight

H. LaDon Baltimore, Esquire
Farrar & Bates
211 Seventh Ave. N, # 320
Nashville, TN 37219-1823



FILE

1 BELL SOUTH TELECOMMUNICATIONS, INC.

2 REBUTTAL TESTIMONY OF ALPHONSO J. VARNER

3 BEFORE THE TENNESSEE REGULATORY AUTHORITY

4 DOCKET NO. 99-00436

5 OCTOBER 25, 1999

6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR
9 BUSINESS ADDRESS.

10
11 A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior
12 Director for State Regulatory for the nine-state BellSouth region. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

16
17 A. Yes. I filed direct testimony on October 15, 1999.

18
19 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

20
21 A. My rebuttal testimony addresses the direct testimony filed with the Tennessee
22 Regulatory Authority ("Authority") on October 15, 1999 by ITC^DeltaCom
23 Communications, Inc. ("DeltaCom") witnesses Christopher Rozycki, Thomas
24 Hyde, and Don Wood. My rebuttal testimony addresses comments related to
25 DeltaCom Issues: 1(a), 1(b), 2, 2(b)(ii), 2(b)(iii), 3(1), 3(2), 6(a), 6(b), 7(b)(iv)

1 and 8(b).

2

3 Q. ARE THERE ANY GENERAL COMMENTS YOU HAVE CONCERNING
4 DELTACOM'S TESTIMONY FILED IN THIS PROCEEDING?

5

6 A. Yes, I have several general comments concerning the testimony of DeltaCom's
7 witnesses. First, I take exception to the implication that BellSouth has not
8 negotiated in good faith. BellSouth negotiates interconnection agreements on a
9 daily basis and has, in fact, entered into more than 800 agreements with
10 various competitive local exchange carriers ("CLECs"), the vast majority of
11 which have been finalized through voluntary negotiations, i.e., without
12 arbitration.

13

14 Second, BellSouth's proposal to DeltaCom of a standard agreement cannot be
15 viewed as a "giant step backward" as Mr. Rozycki complains. BellSouth
16 proposed the standard agreement as the starting point for negotiations.
17 BellSouth has agreed to many modifications to the standard agreement as
18 requested by DeltaCom. Obviously, negotiation of interconnection agreements
19 is an evolving process, and BellSouth strives to streamline that process to the
20 advantage of both BellSouth and the CLECs. Since BellSouth's standard
21 agreement is continuously being modified to reflect changes in the law, recent
22 state commission decisions, and the parties' experience in the local market, I
23 fail to see how DeltaCom's initial agreement (that was negotiated two years
24 ago) would be a better starting point. Further, BellSouth's standard agreement
25 promotes nondiscriminatory treatment of CLECs. While BellSouth recognizes

1 that each CLEC is different, there are cost advantages to standardizing
2 agreements as much as possible.

3

4 Mr. Rozycki's testimony alleges that if DeltaCom were to accept BellSouth's
5 standard agreement, DeltaCom would not be able to provide quality service to
6 its customers and would not be able to provide service at "parity" with
7 BellSouth. This allegation is completely false. BellSouth's standard
8 agreement fulfills its obligations under the Act. Several CLECs across
9 BellSouth's region have entered into BellSouth's standard agreement or some
10 variation thereof and are competing successfully in the marketplace. As I
11 previously stated, BellSouth's standard agreement is designed to promote
12 nondiscrimination.

13

14 Q. MR. ROZYCKI DISCUSSES ON PAGE 4 THE REASONS WHY HE
15 CLAIMS THAT "SO MANY UNRESOLVED ISSUES" REMAIN AFTER
16 OVER SIX MONTHS OF NEGOTIATIONS. PLEASE COMMENT.

17

18 A. First, Mr. Rozycki claims that if DeltaCom were to agree to the terms and
19 conditions of the contract offered by BellSouth, it could not provide the
20 necessary quality of service to compete. BellSouth has over 800 agreements in
21 effect with CLECs. These facts belie Mr. Rozycki's claim that DeltaCom
22 cannot provide quality service. Numerous CLECs are providing service under
23 agreements with BellSouth, yet DeltaCom wants this Authority to believe that
24 it cannot provide quality service, even with an agreement that has the same
25 provisions as other successful CLECs.

1
2 Second, Mr. Rozycki claims on page 4 that BellSouth has been “quite
3 uncompromising on even the most basic elements of the agreement”. The
4 original list of issues as included in DeltaCom’s petition included 73 issues.
5 Of these, 43 have been completely resolved, with others being partially
6 resolved. These resolutions have, in most instances, been due to BellSouth’s
7 willingness to compromise, contrary to Mr. Rozycki’s assertion.

8
9 Further, on page 4, Mr. Rozycki cites five fundamental elements which must
10 be incorporated in DeltaCom’s interconnection agreement. His list is
11 instructive of DeltaCom’s approach. BellSouth is only obligated to fulfill its
12 duties under Section 251 of the Act through agreements. Although BellSouth
13 has voluntarily agreed to provide capabilities beyond the Act, it is not
14 obligated to do so. DeltaCom’s requests under items 1,2, 4, and 5 of its list
15 require BellSouth to exceed its obligations under the Act. There is no
16 requirement for BellSouth to do that. DeltaCom is not permitted to use
17 arbitration under the Act to force BellSouth to exceeds its obligations under the
18 Act. With regard to item 3 (requesting a fully functioning Operational Support
19 System), numerous CLECs including DeltaCom are using the OSS
20 satisfactorily, yet DeltaCom continues to claim it is not fully functional.

21
22 Q. ON PAGES 3-4, MR. ROZYCKI SEEMS TO BE ASKING FOR THE RIGHT
23 TO KEEP OPEN CONTESTED ISSUES NOT INCLUDED IN ITS
24 ARBITRATION PETITION. PLEASE COMMENT.
25

1 A. This point seems to be irrelevant. The only issues that are properly included in
2 this arbitration are those stated in DeltaCom's petition. If there are other
3 unresolved issues – and I am not aware that there are any – they are not a part
4 of this arbitration.

5

6 Q. PLEASE COMMENT ON VAGUE ALLEGATIONS AGAINST
7 BELL SOUTH RAISED BY DELTACOM IN ITS PRE-FILED TESTIMONY.

8

9 A. In its pre-filed testimony, DeltaCom has made vague allegations regarding
10 problems that BellSouth has caused DeltaCom. For example, Mr. Hyde (page
11 3) states: "BellSouth's continued refusal to provide any type of parity ... will
12 result in a competitive advantage for BellSouth and stifle the development of
13 competition." Mr. Rozycki characterizes BellSouth's negotiating philosophy
14 with the statement (page 6): "It appears that BellSouth is using a win-lose
15 strategy, and is rarely seeking common ground." Mr. Rozycki states (page 12):
16 "This 'window of opportunity' [for BellSouth to winback customers] is made
17 possible by the disparity in provisioning that DeltaCom experiences."
18 DeltaCom's witnesses have not provided sufficient details to either substantiate
19 their vague allegations or permit BellSouth to even investigate the situations to
20 which they are referring. Without such details, BellSouth has no way to
21 respond, and this Authority has no way to assess these vague accusations.
22 Consequently, the Authority should not give any weight to DeltaCom's
23 unsupported claims.

24

25 It is BellSouth's policy and intent to provide high quality, nondiscriminatory

1 treatment to our CLEC customers. Whenever there are instances where
2 DeltaCom believes BellSouth has failed to meet its responsibilities, it is
3 incumbent upon DeltaCom to provide prompt, complete information for
4 BellSouth to investigate such instances.

5

6 Q. MR. HYDE (PAGES 20-21) PROPOSES THAT DELTACOM ENTER INTO
7 A BINDING FORECAST WITH BELL SOUTH AS PART OF THE
8 INTERCONNECTION AGREEMENT. WHAT IS YOUR
9 UNDERSTANDING OF DELTACOM'S REQUEST?

10

11 A. First, the issue of binding forecasts was not specified in DeltaCom's Petition,
12 and it is my understanding that the Pre-Hearing officer has ruled that this issue
13 is not properly a subject of this arbitration. Second, only Section 251 issues
14 are appropriate for arbitration, and binding forecasts are not required under
15 Section 251. Therefore, this issue is not subject to arbitration. Nonetheless, I
16 am providing BellSouth's position on the issue of binding forecasts because it
17 is addressed in Mr. Hyde's testimony.

18

19 Q WHAT HAS DELTACOM PROPOSED WITH RESPECT TO BINDING
20 FORECASTS?

21

22 A. The binding forecast arrangement proposed by DeltaCom would presumably
23 guarantee DeltaCom a certain level of capacity on BellSouth's network.
24 Deltacom has never clearly identified what costs it is willing to pay for this
25 forecast. However, it appears that DeltaCom would reimburse a portion of

1 BellSouth's costs only if the capacity were not ultimately used by DeltaCom at
2 some future time. DeltaCom does not appear to be willing to pay costs
3 incurred during the period when this capacity is reserved for it, but they are
4 ramping up their usage.

5

6 Q. WHAT IS BELL SOUTH'S POSITION REGARDING BINDING
7 FORECASTS?

8

9 A. Although not required under the Act or by FCC rules, BellSouth has recently
10 completed development of a service (Trunk Port Commitment Service)
11 whereby BellSouth will commit to provisioning the necessary DS1 trunk ports
12 when the Parties agree to the requirements of a CLEC-provided DS1 trunk port
13 forecast. BellSouth is now in the process of developing implementation
14 procedures and contract language, upon completion of which, it will begin
15 offering the service.

16

17 *Issue 1(a): Should BellSouth be required to comply with the performance measures*
18 *and guarantees for pre-ordering/ordering, resale, and unbundled network elements,*
19 *("UNEs"), provisioning, maintenance, interim number portability and local number*
20 *portability, collocation, coordinated conversions and the bona fide request processes*
21 *as set forth fully in Attachment 10 of Exhibit A to this Petition?*

22

23 *Issue 1(b): Should BellSouth be required to waive any nonrecurring charges when*
24 *it misses a due date? If so, under what circumstances and for which UNEs?*

25

1 Q. PLEASE COMMENT ON MR. ROZYCKI'S ASSERTION THAT THE
2 AUTHORITY SHOULD REQUIRE PERFORMANCE MEASUREMENTS
3 AND PENALTIES IN THIS ARBITRATION.
4

5 A. Designing a measurement plan and establishing penalties are two completely
6 different issues. Performance measurements are addressed in the testimony of
7 Mr. Coon. Based on discussions with DeltaCom, it does not appear that they
8 necessarily disagree with using BellSouth's proposed measurements. Their
9 disagreement is limited to the fact that penalties are not included in
10 BellSouth's measurements plan.
11

12 As discussed in my direct testimony, penalties are not appropriate as an issue
13 for arbitration, nor should they be imposed as a contractual remedy. Penalties
14 are neither a requirement of Section 251 of the Act nor of the FCC's rules.
15 The FCC expressed a preference for self-effectuating enforcement mechanisms
16 only as a public interest concern under the statutory standard of review for
17 assessing an application under Section 271. At most, penalties are an issue
18 under Section 271, not a requirement of Section 251. Thus, they are not
19 appropriate for arbitration. In fact, Mr. Rozycki's testimony only discusses
20 these penalties as anti-backsliding measures associated with a grant of 271
21 authority.
22

23 Q. PLEASE COMMENT ON MR. ROZYCKI'S EVIDENCE THAT
24 PERFORMANCE PENALTIES SHOULD BE INCORPORATED INTO
25 INTERCONNECTION AGREEMENTS.

1

2 A. First, his observation at page 8 that such penalties are included in agreements
3 in California and Texas provides no basis for the Authority to require penalties.
4 What Mr. Rozycki fails to point out is that these “penalties” are voluntary.
5 SBC is aware of the FCC’s desire for enforcement mechanisms as a condition
6 of Section 271 relief, and, therefore, has voluntarily agreed to such
7 mechanisms. In fact, to quote from the SBC (SWBT) Performance
8 Measurements document attached to Mr. Rozycki’s testimony as CJR-2:

9

10 **“2.0 Reservation of Rights**

11 By agreeing to the performance measurements contained in this
12 agreement, SWBT:

- 13 • Does not make any admission regarding the propriety or
14 reasonableness of any mandatory establishment by the PUC of
15 performance penalties or liquidated damages; ...
- 16 • Reserves the right to contend that any damages or penalties
17 approved by the PUC should be the exclusive remedy for any
18 failure of performance and should be viewed only as guidelines,
19 subject to voluntary negotiation by the parties...” (emphasis added)

20

21 Simply observing that “penalties” are in agreements in no way indicates that
22 either of those Commissions concluded that such enforcement mechanisms are
23 required under Section 251 of the Act or could be imposed.

24

25 Second, Mr. Rozycki’s statements (p. 8 and Exhibit CJR-3) concerning a

1 penalty proposal BellSouth made to the FCC are irrelevant to this proceeding.
2 Based on the FCC's expressed preference for enforcement mechanisms as a
3 condition of 271 relief, BellSouth has been working with the FCC to reach
4 agreement on a set of such mechanisms that BellSouth would offer voluntarily.
5 BellSouth has not indicated that such mechanisms are required under Section
6 251, nor that they could be required by a state commission.
7
8 BellSouth's proposals were made to address the FCC's 271 concerns and
9 would become effective only upon a grant of 271 relief in a given state.
10 However, the FCC staff did not accept the proposal attached to Mr. Rozycki's
11 testimony and that proposal has since been superseded. BellSouth has
12 continued to try to reach agreement with the FCC, but has not yet achieved that
13 goal. It would be fruitless to include enforcement mechanisms in an
14 interconnection agreement until BellSouth has reasonable assurance that the
15 plan will satisfy the FCC's concerns under Section 271 of the Act. Once
16 finalized, BellSouth will agree to include FCC approved enforcement
17 mechanisms in its interconnection agreements. Such mechanisms would
18 become effective coincident with the exercise of 271 relief in a given state.
19 Since these mechanism would fulfill the concerns of the FCC, DeltaCom's
20 concerns should be moot.

21
22 Q. ON PAGE 9, MR. ROZYCKI OUTLINES THREE LEVELS OF
23 PERFORMANCE MEASUREMENTS AND PERFORMANCE
24 GUARANTEES, AND ON PAGE 10, HE STATES THAT DELTACOM'S
25 SOLUTION TO BELL SOUTH'S CONCERNS IS TO PAY TIERS TWO

1 AND THREE TO THE STATE. PLEASE COMMENT.

2

3 A. Mr. Rozycki's comments appear to be directed to the "moral hazard" issue
4 discussed in the testimony of Dr. William Taylor. The moral hazard issue is
5 not the sole concern that BellSouth has – just one of the concerns. Mr.
6 Rozycki's proposal does not address any of the concerns other than moral
7 hazard, and only partially addresses that issue. For example, DeltaCom does
8 not address BellSouth's concern about having numerous different enforcement
9 mechanism plans in different contracts that are unacceptable to the FCC.

10

11 *Issue 2(a): What is the definition of parity?*

12 *Issue 2(b): Pursuant to the definition of parity, should BellSouth be required to*
13 *provide the following, and if so, under what conditions and at what rates: (2)*
14 *UNEs?*

15

16 Q. MR. ROZYCKI DISCUSSES THE ISSUE OF "PARITY" ON PAGES 11-12
17 OF HIS TESTIMONY. IS DELTACOM'S REQUEST FOR PARITY
18 CONSISTENT WITH THE ACT?

19

20 A. No. The Act requires nondiscrimination. DeltaCom requests better service
21 than nondiscriminatory treatment would provide. DeltaCom has used the term
22 "parity" to disguise a request to give them better treatment than the Act
23 requires.

24

25 Q. DOES BELL SOUTH HAVE A PROBLEM WITH THE LANGUAGE

1 DELTACOM IS REQUESTING REGARDING BELL SOUTH'S
2 NONDISCRIMINATION OBLIGATIONS?

3
4 A. Yes. The proposed agreement already contains nondiscrimination provisions
5 that BellSouth has agreed to include: GTC 3.1 and the first sentence of GTC
6 3.2. However, the second sentence of GTC 3.2 as proposed by DeltaCom
7 states: "BellSouth will provide DeltaCom with pre-ordering, ordering,
8 maintenance and trouble reporting and daily usage data functionality equal to
9 or greater than that which BellSouth provides to its own end users." (emphasis
10 added) Absolutely nothing in the Act or the FCC's rules requires a "greater
11 than" standard. In fact, FCC Rule 51.305(a)(4) which addressed superior
12 quality interconnection was vacated by the Eighth Circuit and was not
13 challenged by any party; therefore, that rule remains vacated. The language
14 proposed by DeltaCom in Att. 2-2.3.1.4-.5 and Att. 6-1.1 goes beyond the
15 nondiscrimination requirements of the Act and FCC orders, and BellSouth
16 cannot agree to include this language in the agreement.

17
18 Q. IN HIS DISCUSSION OF PARITY, MR. HYDE STATES (PAGE 2-3):
19 "...ITC^DELTACOM REQUESTED THAT BELL SOUTH AGREE TO
20 PROVIDE UNES AT PARITY WITH BELL SOUTH'S RETAIL SERVICES.
21 ...BELL SOUTH SERVICES ARE MADE UP OF COMBINED UNES."
22 HOW DO YOU RESPOND?

23
24 A. As stated in my direct testimony, the provision of UNES is not the same as the
25 provision of retail services. BellSouth does not provide UNES to itself or to its

1 retail customers. UNEs are made available to a CLEC in such a way that the
2 CLEC may either combine those UNEs with the CLEC's other facilities or
3 combine those UNEs with other UNEs acquired from BellSouth. This means
4 that there must be provisions made for giving the CLEC access to UNEs. By
5 comparison, BellSouth does not need such special provisions since BellSouth
6 does not provide UNEs to itself. Therefore, Mr. Hyde's assertion that
7 BellSouth's provision of UNEs to CLECs should be at "parity" with
8 BellSouth's retail services is incorrect. Contrary to DeltaCom's claims,
9 BellSouth does provide nondiscriminatory access to UNEs to DeltaCom and to
10 other CLECs.

11

12 Q. MR. ROZYCKI (PAGE 12) CLAIMS THAT BELL SOUTH ATTEMPTS TO
13 WIN BACK CUSTOMERS PRIOR TO THE CUSTOMER'S SERVICE
14 BEING "TURNED UP" BY DELTACOM. PLEASE COMMENT.

15

16 A. This is another instance of DeltaCom making vague accusations without
17 sufficient details for BellSouth to investigate DeltaCom's claims. DeltaCom
18 appears to imply that there are instances in which a customer requests that he
19 be switched to DeltaCom, and then is out of service before being connected to
20 DeltaCom's network. Mr. Rozycki's statement that "[t]his delay provides
21 BellSouth with ample time – too much time – to approach the customer and
22 attempt to win them back by offering to get them back in service more
23 quickly" does not make sense. The customer is already being served by
24 BellSouth; his service would not be disconnected until the cutover to
25 DeltaCom occurs. Consequently, BellSouth does not know whether it can

1 serve the customer more quickly than DeltaCom, and cannot make such an
2 offer to the customer. Therefore, it is difficult to understand DeltaCom's
3 complaint.

4
5 Further, it is BellSouth's policy not to attempt to winback customers prior to
6 their service being switched. The BellSouth business unit accepting CLEC
7 orders does not furnish such information to BellSouth's retail unit, which
8 would be the source of contacts to "winback" customers. When a BellSouth
9 end user switches to a competitor, BellSouth mails a notification letter to the
10 end user after the end user's service is converted from BellSouth to the
11 competitor. The letter advises the end user that his/her request to switch local
12 service has been completed and that BellSouth hopes to have the opportunity
13 to serve the customer in the future. BellSouth's intention is threefold: 1) to end
14 its business relationship with the customer on a positive note, 2) to notify its
15 former customer that a change of service provider has been made and 3) to
16 provide a contact number if the customer has any questions. Further, the
17 notification letter serves as a reasonable safeguard that slamming (switching a
18 customer's telephone service to a different company without his/her
19 knowledge or permission) of the end user has not occurred.

20
21 ***Issue 2(b)(ii): Until the Commission [FCC] makes a decision regarding UNEs and***
22 ***UNE combinations, should BellSouth be required to continue providing those UNEs***
23 ***and combinations that it is currently providing to DeltaCom under the***
24 ***interconnection agreement previously approved by this Commission [the Authority]?***

25

1 ***Issue 2(b)(iii): (a) Should BellSouth be required to provide to DeltaCom the***
2 ***following combinations: (1) Loop Port Combinations, (2) Loop Transport UNE***
3 ***Combinations, (3) Loop UNE connected to Access Transport? (b) If so, what***
4 ***should the rates be?***
5

6 Q. MR. WOOD STATES (PAGE 4) THAT CLECs MUST BE ABLE TO
7 EASILY AND RELIABLY ORDER UNES AND COMBINATIONS OF
8 THOSE UNES INCLUDING THOSE THAT INCLUDE LOCAL
9 SWITCHING. PLEASE RESPOND.

10

11 A. BellSouth provides CLECs with nondiscriminatory access to individual UNEs.
12 The FCC's rule 51.315(b) that prohibits ILECs from separating currently
13 combined elements is in effect, and the FCC recently completed its 319
14 proceeding but has not yet issued its order. Until the FCC issues its order,
15 there is no minimum list of UNEs that BellSouth is required to offer.
16 However, from the FCC's September 15, 1999 Press Release, it is clear that
17 switching is not required to be a UNE in certain circumstances. For those
18 circumstances where switching is not a UNE, Mr. Wood is obviously incorrect.

19

20 Q. BASED ON THE RECENT ACTION BY THE FCC ON SEPTEMBER 15,
21 1999, IS BELL SOUTH OBLIGATED TO COMBINE UNES FOR CLECs?

22

23 A. No, BellSouth is not obligated to combine UNEs. The FCC's rules that
24 attempted to require BellSouth to combine UNEs were vacated by the Eighth
25 Circuit Court and were not challenged before the Supreme Court. Therefore,

1 those rules are still vacated even though the Eighth Circuit is reevaluating
2 them. Further, it does not appear that the FCC's 319 order will purport to
3 obligate BellSouth to combine UNEs.

4
5 Q. HOW DOES THE FCC'S 319 RULING AFFECT THIS ARBITRATION?

6
7 A. The FCC's order will specify the UNEs that BellSouth must offer, as well as
8 the conditions under which CLECs can use those UNEs. As a result, the order
9 will also determine the extent to which there are currently combined UNEs in
10 BellSouth's network which CLECs can order. Whatever action the Authority
11 takes in this arbitration must be consistent with the FCC's order.

12
13 Q. MR HYDE (PAGES 7-8) STATES THAT BELL SOUTH HAS PROVIDED
14 DELTACOM WITH EXTENDED LOOPS BUT IS REFUSING TO
15 CONTINUE SUCH PROVISIONING. PLEASE RESPOND.

16
17 A. In this instance, DeltaCom is attempting to rescind a voluntary agreement
18 made with BellSouth. This voluntary agreement covers services that were not
19 required by DeltaCom's previous agreement or the Act. Thus, the referenced
20 arrangement has no bearing on this arbitration.

21
22 Apparently, DeltaCom first ordered channelized special access (a tariffed
23 service), and then ordered UNE loops to be terminated to the special access
24 facility. This is what DeltaCom is referring to as "extended loops" in this
25 instance. These "extended loops" were provided based on a misinterpretation

1 of the interconnection agreement by BellSouth's Contract Group. BellSouth is
2 under no obligation, either by the contract or by the Act or the FCC's Rules, to
3 combine UNEs with BellSouth's retail services. By the time BellSouth
4 discovered its mistake, BellSouth had already combined a number of loops
5 with special access for DeltaCom.

6
7 To avoid a complete disruption of DeltaCom's service (which would
8 potentially affect DeltaCom's end users), BellSouth reached a verbal
9 agreement with DeltaCom earlier this year that BellSouth would continue
10 provisioning these extended loops to DeltaCom until such time as DeltaCom
11 could establish collocation arrangements in the related central offices.
12 DeltaCom confirmed this agreement in its arbitration hearing in South
13 Carolina. DeltaCom's claim in this arbitration is an attempt to rescind that
14 agreement.

15
16 In order to bring these service arrangements into compliance, DeltaCom
17 submitted over fifty additional collocation applications in May, 1999. These
18 applications are in the process of being implemented. Further, when these
19 collocation arrangements are completed, BellSouth's provisioning of
20 "extended loops" to DeltaCom will be curtailed, and existing "extended loops"
21 will be converted. Further, any requests for these "extended loops" by
22 DeltaCom involving other central offices, outside the verbal agreement, are not
23 being processed by BellSouth.

24

25 ***Issue 3(1): Should BellSouth be required to pay reciprocal compensation to***

1 *DeltaCom for all calls that are properly routed over local trunks, including calls to*
2 *Internet Service Providers (ISPs)?*

3
4 Q. PLEASES COMMENT ON MR. ROZYCKI'S APPLICATION OF COST
5 CAUSATION PRINCIPLES TO ISP CALLS (PAGE 23).

6
7 A. Mr. Rozycki is completely incorrect. He claims that the end user is the cost
8 causer for BellSouth on access service. That is completely wrong. The FCC
9 has held from the beginning of the access service regime that carriers, not end
10 users, are the customers for access service. It is the IXC or ISP that is the cost
11 causer for BellSouth or DeltaCom for access service. The end user is the cost
12 causer of the IXC or ISP for the retail services that utilize the access service.

13
14 For example, when an end user makes a long distance call, the end user is not
15 billed by BellSouth for access service; the IXC is billed by BellSouth. The end
16 user is a cost causer of the IXC and is billed a long distance charge by the IXC.
17 There is no separate access charge billed to the end user for the access service
18 provided on that call. The access charges are billed to the IXC.

19
20 Likewise, when end users purchase basic local exchange service from
21 BellSouth, they do not get internet access. The end user must purchase the
22 internet access from the ISP. The end user is a cost causer for the ISP. The
23 ISP is the cost causer for BellSouth and/or DeltaCom. The ISP, not the end
24 user is BellSouth's or DeltaCom's customer for those calls.

25

1 Mr. Rozycki incorrectly concludes that the cost responsibility for local calls
2 and calls to ISPs or IXC's is the same. The FCC has held that his conclusion is
3 wrong. The end user has cost responsibility for local calls. The carrier
4 receiving access service, e.g. the IXC or ISP, has cost responsibility for access
5 service.

6

7 Q. WHY IS IT IMPORTANT TO IDENTIFY THE COST CAUSER
8 CORRECTLY?

9

10 A. It is important to do so because correct assignment of cost responsibility is
11 necessary to determine who should be compensated when multiple carriers are
12 involved in providing services. For local calls, the end user is the cost causer.
13 As a result, the originating carrier collects all of the revenue. Consequently,
14 the originating carrier should share that revenue with the terminating carrier.
15 Otherwise, the terminating carrier incurs a cost without any remuneration.
16 This is the situation that reciprocal compensation was designed to address.

17

18 For access service, e.g., calls to IXC's or ISPs, the IXC or ISP is the cost
19 causer. As a result, the carrier serving the IXC or ISP, i.e., the terminating
20 carrier, collects all of the revenue. Consequently the terminating carrier should
21 share that revenue with the originating carrier. Otherwise, the originating
22 carrier incurs costs without remuneration. Compensation is due for this traffic,
23 but it is the originating carrier who should be compensated. Reciprocal
24 compensation was designed to address the opposite circumstance. Applying
25 reciprocal compensation in this case merely gives the carrier who is already

1 being compensated more revenue and increases the cost of the carrier who is
2 already providing the service at a loss. Instead of providing appropriate
3 compensation, reciprocal compensation, if applied here, would subsidize the
4 terminating carrier, distort the market for serving ISPs, and reduce the
5 incentive to serve end users. Instead of promoting competition, applying
6 reciprocal compensation to ISP-bound traffic would inhibit competition.
7

8 Q. ON PAGE 25 OF HIS TESTIMONY, MR. ROZYCKI STATES, "...THE
9 FCC HAS INDICATED THAT UNTIL IT PROPOSES RULES, THE
10 STATES ARE FREE TO DETERMINE WHETHER TO REQUIRE
11 RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC." PLEASE
12 COMMENT.
13

14 A. Mr. Rozycki ignores the issue of whether the FCC has the power to grant this
15 authority to the states. A number of carriers, including BellSouth, have
16 challenged the FCC's Declaratory Order to the extent it purports to authorize a
17 state commission, acting pursuant to Section 252 of the 1996 Act, to require a
18 local exchange carrier to pay "reciprocal compensation" for traffic that is
19 undisputedly interstate in nature. This issue is currently on appeal to the
20 United States Court of Appeals for the District of Columbia Circuit, which will
21 determine whether the FCC's attempt to authorize state commissions to require
22 the payment of reciprocal compensation as part of the arbitration process under
23 Section 252 is lawful. See *Bell Atlantic Telephone Company et al. V. Federal*
24 *Communications Commission et al.* No. 99-1094 (March 3, 1999).
25

1 Q. ON PAGE 17, LINE 29, MR. ROZYCKI STATES THAT, TO HIS
2 KNOWLEDGE, BELLSOUTH HAS NOT PROPOSED ANY METHOD OF
3 COMPENSATING DELTACOM FOR THE USE OF ITS NETWORK.
4 PLEASE RESPOND.
5

6 A. Mr. Rozycki is incorrect. DeltaCom is compensated for the use of its network
7 by its ISP customers. DeltaCom is not entitled to any compensation from
8 BellSouth for ISP bound traffic. On the contrary, DeltaCom should be
9 compensating BellSouth for such traffic.
10

11 Q. MR. ROZYCKI REFERS TO DELTACOM PAYING BELLSOUTH FOR
12 ACCESS ISP-BOUND TRAFFIC (PAGE 18, LINE 3). IS THIS THE ONLY
13 INTERIM SHARING METHOD PROPOSED BY BELLSOUTH?
14

15 A. No. BellSouth has proposed three options for interim compensation for ISP-
16 bound traffic, all of which methods are far superior to reciprocal compensation
17 for ISP bound traffic: (1) Until the FCC's rules are final, both parties would
18 track their traffic, with provision for a true-up of compensation retroactive to
19 the effective date of the new interconnection agreement; (2) Revenues
20 collected from ISPs by both parties would be apportioned among the parties
21 (BellSouth and DeltaCom), consistent with the proposal BellSouth filed with
22 the FCC; or (3) The parties could implement a bill-and-keep arrangement for
23 ISP-bound traffic, in which neither of the two interconnecting carriers would
24 charge the other for ISP-bound traffic that originates on the other carrier's
25 network.

1

2 Q. ON PAGE 18, MR. ROZYCKI STATES THAT, "BELLSOUTH HAS TOLD
3 ITC^DELTACOM THAT IT MUST PROVIDE THEM FREE USE OF ITS
4 NETWORK FOR ALL CALLS TO THE INTERNET AND TO PAY
5 BELLSOUTH FOR THE PRIVILEGE OF CARRYING THE TRAFFIC FOR
6 FREE." PLEASE COMMENT.

7

8 A. I disagree with his contention. I discussed the applicability of reciprocal
9 compensation at length in my direct testimony, and I won't repeat that here.
10 Briefly, BellSouth is not requesting free use of DeltaCom's network for ISP
11 calls. For ISP calls, DeltaCom is the only party collecting revenue; therefore,
12 no reciprocal compensation is due them for these calls. It is Deltacom who is
13 requesting free use of BellSouth's network and simultaneously asking
14 BellSouth to subsidize Deltacom's provision of service to ISPs.

15

16 Q. ON PAGE 18, MR. ROZYCKI IMPLIES THAT BELLSOUTH HAS NOT
17 MET ITS 251 OBLIGATION TO NEGOTIATE IN GOOD FAITH BY
18 REFUSING TO PAY RECIPROCAL COMPENSATION FOR ISP TRAFFIC.
19 PLEASE COMMENT.

20

21 A. Mr. Rozycki is incorrect. He supports his claim by misstating the requirements
22 of Section 251. Section 251(c)(1) states:

23

24

25

*Duty to negotiate – The duty to negotiate in good faith in accordance
with Section 252 the particular terms and conditions of agreements to*

1 *fulfill the duties described in paragraph (1) through (5) of subsection*
2 *(b) and this subsection. The requesting telecommunications carrier*
3 *also has the duty to negotiate in good faith the terms and conditions of*
4 *such agreements.*

5
6 The obligation to negotiate in good faith applies to those duties listed in
7 251(b)(1)-251(b)(5) and 251(c). None of those duties apply to ISP bound
8 traffic. The FCC specifically said that the reciprocal compensation obligations
9 of Section 251(b)(5) do not apply to ISP traffic (FCC's Declaratory Order,
10 Footnote 87).

11
12 Q. DELTACOM ADVOCATES PAYMENT OF RECIPROCAL
13 COMPENSATION FOR ISP-BOUND TRAFFIC. IS IT REASONABLE
14 FOR RECIPROCAL COMPENSATION TO BE PAID FROM LOCAL
15 SERVICE REVENUES?

16
17 A. No. The FCC has clearly established that ISP-bound traffic is access traffic,
18 not local traffic. As I discussed in my direct testimony, the local exchange
19 rates paid by end user customers were never intended to recover costs
20 associated with providing access service and were established long before the
21 Internet became popular. Basic local exchange service customers buy access
22 to the Internet directly from their ISP, typically for a recurring monthly charge.
23 The ISP, therefore receives its revenue directly from end user customers.
24 Further, LECs that serve the ISPs are compensated for the service they provide
25 directly from the ISP through flat rate business rates. In addition to the

1 compensation DeltaCom receives directly from its ISP customers, DeltaCom
2 wants additional compensation from BellSouth even though BellSouth doesn't
3 collect revenues for this service.

4
5 To demonstrate how absurd DeltaCom's claim is, consider the following
6 example. Assume a BellSouth residential customer in Tennessee subscribes to
7 an ISP and that ISP is served by a CLEC. Based on available statistics, a
8 customer uses the Internet an average of 6.5 hours per week, i.e., a little under
9 56 minutes per day. This usage would generate a reciprocal compensation
10 payment by BellSouth to the CLEC of \$15.04 per month assuming a \$.009 per
11 minute reciprocal compensation rate [$$.009 * 55.7 \text{ minutes/day} * 30 \text{ days}$].
12 BellSouth serves residence customers in Tennessee at an average of \$10.95 per
13 month (flat-rate local rate). Therefore, in this example, BellSouth would be
14 forced to turn over to the CLEC not only every penny of local service revenue
15 it receives from its end users, but also an additional \$4.09 per month. This
16 situation makes no economic sense and would place an unfair burden on
17 BellSouth and its customers. It is incomprehensible that BellSouth would
18 willingly agree or that the Authority would mandate BellSouth to pay
19 DeltaCom, or any other CLEC, more than what it receives per month per
20 customer for providing local service.

21
22 Q. ON PAGE 25, MR. ROZYCKI DISCUSSES POSSIBLE CONSEQUENCES
23 IF DELTACOM DOES NOT RECEIVE RECIPROCAL COMPENSATION
24 FOR CALLS TO ISPs. PLEASE COMMENT.

1 A. Mr. Rozycki suggests that without reciprocal compensation for ISP-bound
2 traffic, CLECs, that predominantly serve ISPs, will be forced to raise their
3 rates and lose their ISP customers to ILECs.
4
5 BellSouth does not agree that DeltaCom's prediction of dire consequences is a
6 reasonable consequence of DeltaCom's failure to receive reciprocal
7 compensation for ISP-bound traffic. First, the prices that BellSouth charges its
8 ISP customers do not reflect receipt of any reciprocal compensation, and it is
9 those prices that DeltaCom is competing against. DeltaCom provides no
10 evidence to show that it needs reciprocal compensation to compete for ISP
11 customers. If BellSouth does not require reciprocal compensation to offer a
12 competitive price, why would DeltaCom?
13
14
15 Second, as I demonstrated in my direct testimony through the following chart,
16 reciprocal compensation allows the CLEC to offer lower prices to ISPs without
17 reducing their net margins. Thus, reciprocal compensation subsidizes the prices
18 the CLEC charges the ISP. Removing reciprocal compensation wouldn't force
19 DeltaCom to raise its rates; it would simply put DeltaCom's margins in the
20 same range as BellSouth's.

1

	<i>SERVING AN ISP AND RECEIVING RECIPROCAL COMPENSATION</i>	<i>SERVING AN ISP WITHOUT RECEIVING RECIPROCAL COMPENSATION</i>
REVENUE FROM ISP FOR SERVICE	\$600	\$900
RECIPROCAL COMPENSATION REVENUE PAID	\$300	\$0
COST OF PROVIDING SERVICE TO ISP	(\$600)	(\$600)
NET MARGIN	\$300	\$300

2

3

4

5

6

7

8 Q. SHOULD THE AUTHORITY ESTABLISH A POLICY FOR TREATING
9 ISP-BOUND TRAFFIC ON A CASE BY CASE BASIS?

10

11 A. No. This decision is really a policy determination that affects more than just
12 BellSouth and DeltaCom. The compensation that should be paid for ISP-
13 bound traffic affects incumbents, CLECs, ISP, internet users, and local
14 ratepayers, among others. Because this issue has industry wide significance,
15 the Authority should consider the full impact of any inter-carrier
16 compensation decision on the industry, rather than on a case-by-case basis.

17

18 Q. WHAT IS THE ESTIMATED FINANCIAL IMPACT TO INCUMBENT
19 LOCAL EXCHANGE CARRIERS IF ISP TRAFFIC WERE SUBJECT TO

1 THE PAYMENT OF RECIPROCAL COMPENSATION?

2

3 A. If Internet traffic were subject to the payment of reciprocal compensation,
4 BellSouth conservatively estimates that the annual reciprocal compensation
5 payments by incumbent local exchange carriers in the United States for ISP
6 traffic could easily reach \$2.6 billion by the year 2002. This estimate is based
7 on 64 million Internet users in the United States, an average Internet usage of
8 6.5 hours per week, and a low reciprocal compensation rate of \$.002/minute.
9 This is a totally unreasonable and unacceptable financial liability on the local
10 exchange companies that serve residential and small business users who access
11 ISPs that are customers of other LECs. CLECs targeting large ISPs for this
12 one-way traffic and that can decline to serve residential customers will benefit
13 at the expense of those carriers like BellSouth that have carrier of last resort
14 obligations.

15

16 Q. DO YOU HAVE ANY DATA THAT REFLECTS THE IMPACT OF
17 PAYING RECIPROCAL COMPENSATION FOR ISP TRAFFIC IN
18 TENNESSEE?

19

20 A. The following charts demonstrate the minutes of use and billings from October
21 1998 through September 1999 for ISP and non-ISP traffic:.

22

23

1

ISP-BOUND TRAFFIC (10/98 – 9/99)			
Billed Minutes of Use		Billed Revenue	
BST Sends to CLECs	CLECs Send to BST	CLECs Bill BST	BST Bills CLECs
3,630,949,132	68,176,356	\$39,573,466	\$0

2

3

NON-ISP LOCAL TRAFFIC (10/98 – 9/99)			
Billed Minutes of Use		Billed Revenue	
BST Sends to CLECs	CLECs Send to BST	CLECs Bill BST	BST Bills CLECs
998,957,449	470,379,259	\$10,277,575	\$4,881,418

4

5 Q. WHAT DO THESE CHARTS SHOW RELATIVE TO THE COMPETITIVE
6 MARKETPLACE IN TENNESSEE?

7

8 A. These charts clearly demonstrate that the payment of reciprocal compensation
9 for ISP-bound traffic would create a huge distortion in the marketplace. First,
10 it would reduce the incentive for CLECs to serve residential and business
11 customers, particularly those that are Internet subscribers. Why would a CLEC
12 serve a customer that would cost them virtually every cent of the local revenue
13 they obtained from that customer? Second, it would result in a subsidy to the
14 CLEC. The revenues obtained from the end user by its local service provider
15 would go directly into the pocket of the CLEC or the ISP. Third, it would
16 distort the pricing of services to ISPs. Using reciprocal compensation
17 payments, the CLEC could pass along price breaks to the ISP that would not
18 normally occur in a non-distorted, competitive market.

19

20 Q. PLEASE DESCRIBE HOW THE DATA IN YOUR CHARTS SHOW THAT

1 THE MARKET IN TENNESSEE IS DISTORTED?

2

3 A. The charts demonstrate that during the previous 12 month period in Tennessee
4 CLECs delivered 53 times as much traffic to their ISPs as they sent to ISPs
5 served by BellSouth. Such a disparity might be reasonable if CLECs were
6 providing service to the majority of ISPs. However, such is not the case;
7 BellSouth is providing the majority of service to ISP customers.

8

9 These charts make two points very clear: (1) the size of the subsidy to CLECs
10 serving ISPs is very large; and (2) CLECs are targeting ISP customers in lieu
11 of end users.

12

13 The charts indicate that the size of the subsidy in Tennessee was more than \$39
14 million for the past year. As reflected in the attached exhibit (AJV-1), that
15 amount is growing rapidly.

16

17 Clearly, the non-ISP amounts are small in both directions. In fact, the net non-
18 ISP reciprocal compensation amounts for both companies are miniscule
19 compared to the ISP amounts. The fact that BellSouth provides the majority of
20 ISP service, while CLECs actually deliver more ISP traffic than BellSouth
21 does, plus the fact that the amount of non-ISP traffic is small, is convincing
22 evidence that CLECs are targeting ISP customers.

23

24 *Issue 3(2): What should be the rate for reciprocal compensation per minute of use,*
25 *and how should it be applied?*

1

2 Q. WHAT IS BELLSOUTH'S PROPOSAL FOR RECIPROCAL
3 COMPENSATION PRICING?

4

5 A. BellSouth proposes that both DeltaCom and BellSouth charge the rates to be
6 approved by the Authority for network elements used to transport and
7 terminate local traffic originated by the other party. Consequently, each party
8 would only recover its cost for transporting and terminating the other party's
9 local calls. If DeltaCom wants to use a price based on its own costs, it is free
10 to develop those costs and propose a price based on those costs. Since they
11 have not done so, BellSouth proposes that both parties charge the same price.
12 These prices apply only to the elements actually used to transport and
13 terminate the call. For example, if DeltaCom used end office switching,
14 tandem switching and transport, DeltaCom would charge for all three
15 elements. Conversely, if only one or two of the elements were employed, only
16 those one or two elements would be billed.

17

18 Q. ON PAGE 17 OF HIS TESTIMONY, MR. ROZYCKI STATES,
19 "ITC^DELTACOM OFFERED TO AGREE TO A FORM OF ELEMENTAL
20 BILLING, IF BELLSOUTH WOULD AGREE TO PAY RECIPROCAL
21 COMPENSATION FOR TRAFFIC TO ISPs. BELLSOUTH HAS REFUSED
22 TO COMPROMISE ITS UNREASONABLE POSITION." PLEASE
23 COMMENT.

24

25 A. DeltaCom can hardly claim that BellSouth's position is unreasonable.

1 Elemental billing is a methodology to determine the appropriate rates, where
2 reciprocal compensation is applicable under Section 251(b)(5) of the Act. The
3 FCC has stated that the reciprocal compensation obligation of the Act is not
4 applicable for ISP-bound traffic, because such traffic is access traffic, not local
5 traffic. Consequently, BellSouth's position is reasonable. As Mr. Rozycki
6 states, BellSouth proposed that the parties charge rates to be approved by the
7 Authority for the network elements used to terminate local calls originated by
8 the other party's end users. This structure provides the closest correlation
9 between prices and costs. Both BellSouth and DeltaCom would only be billed
10 for those elements actually used to terminate local calls. Instead, DeltaCom
11 proposes rates that have no cost support. In addition, DeltaCom proposes to
12 charge those rates for traffic where DeltaCom should not receive any
13 compensation from BellSouth, i.e., ISP bound traffic.

14
15 Q. PLEASE COMMENT ON MR. ROZYCKI'S CLAIMS (PAGES 19-22)
16 REGARDING THE EFFECTS OF BELL SOUTH'S ELEMENTAL BILLING
17 PROPOSAL FOR RECIPROCAL COMPESNATION.

18
19 A. His claims are unfounded. His testimony makes a number of claims regarding
20 BellSouth's proposal which are factually incorrect. Once those mistakes are
21 corrected, I am not sure what Mr. Rozycki's objections are.

22
23 Q. WHAT ARE SOME OF THE INACCURATE CLAIMS THAT MR.
24 ROZYCKI MAKES REGARDING BELL SOUTH'S PROPOSAL?

25

1 A. At page 19, line 12, he says that BellSouth proposed a different computation
2 for DeltaCom's rate. That is incorrect. BellSouth is proposing that DeltaCom
3 and BellSouth charge each other the same rate and only charge for the
4 elements employed. BellSouth has not proposed a different computation
5 between the companies.

6
7 At page 20, line 6, he concludes that allowing BellSouth to charge for each
8 element it uses rewards BellSouth for its inefficiency. His conclusion is
9 incorrect. The prices proposed by BellSouth only cover the TELRIC costs for
10 transporting and terminating local calls. According to the FCC rules, these are
11 the appropriate prices for reciprocal compensation. BellSouth's proposal
12 provides the closest match between costs and prices. Simply recovering costs
13 as required by these FCC rules cannot be a reward for inefficiency.

14
15 At page 20, line 8, he states that BellSouth requires DeltaCom to use a formula
16 for transport designed to lower charges to BellSouth. BellSouth has not
17 proposed that DeltaCom use any kind of a formula. DeltaCom would charge
18 for the elements actually employed in its network and would charge the same
19 prices as BellSouth.

20
21 At page 20, lines 20-21, he states that BellSouth wants DeltaCom to charge a
22 proxy transport based on the way BellSouth's network is configured.
23 BellSouth has not proposed any proxy transport rates. If DeltaCom wants to
24 charge a rate based on its own costs, it is free to conduct a cost study and
25 propose those rates. Since they have not proposed their own cost supported

1 rates, the only alternative available is for both DeltaCom and BellSouth to
2 charge the same rate. In addition, the rates DeltaCom would charge are not
3 based on BellSouth's network configuration. BellSouth would pay for the
4 elements DeltaCom employs in its network to transport and terminate calls.
5 These charges would be based on DeltaCom's network configuration.
6

7 Q. HAS BELLSOUTH PROPOSED A PRICING SCHEME WHERE
8 DELTACOM SUBSIDIZES THE PROFIT MARGIN OF BELLSOUTH, AS
9 CLAIMED BY MR. ROZYCKI AT PAGE 20, LINES 2-3?
10

11 A. No. BellSouth has proposed a means to simply recover its incremental costs
12 for transporting and terminating calls originated by DeltaCom's customers.
13 Since the prices would only cover TELRIC costs, no subsidies for profit
14 margins or anything else are included.
15

16 Q. PLEASE COMMENT ON MR. ROZYCKI'S CONJECTURE ABOUT
17 BELLSOUTH'S MOTIVES AT PAGE 20, LINES 13-17.
18

19 A. First, his conjecture is irrelevant to any issues in this proceeding. Second, he is
20 incorrect. Before BellSouth had cost studies for transporting and terminating
21 local traffic, rates equivalent to the comparable access functions were
22 proposed. BellSouth had no basis for proposing any other rates at that time.
23 After the cost studies were completed, BellSouth began negotiating lower rates
24 in existing agreements and proposing the cost based rates. Speculation about
25 state and FCC action on ISP traffic was not the basis for this change in

1 proposed rates.

2

3 Q. PLEASE RESPOND TO MR. ROZYCKI'S PROBLEMS WITH
4 BELLSOUTH'S PROPOSAL TO CHARGE FOR TANDEM SWITCHING.

5

6 A. At page 21, line 10 he says that BellSouth proposes to charge for tandem and
7 end office switching when DeltaCom picks up local traffic at a BellSouth
8 tandem. That claim is incorrect. First, BellSouth would not charge for local
9 traffic picked up by DeltaCom. BellSouth will only charge for tandem
10 switching when BellSouth employs tandem switching to terminate a local call
11 originated by a DeltaCom end user. Likewise, BellSouth would expect to be
12 billed for tandem switching by DeltaCom when it employs a tandem switch to
13 transport a call originated by BellSouth.

14

15 DeltaCom's claim that it may perform the tandem and end office function in
16 one switch is not possible. A switch can perform one of those functions, but
17 the same switch cannot perform both.

18

19 Q. WHAT IS LOCAL TANDEM INTERCONNECTION?

20

21 A. Interconnection at a local tandem permits a CLEC to terminate to a single
22 location all of its local traffic to end offices served by that tandem without the
23 CLEC having to place individual facilities to each end office served by that
24 tandem. When the CLEC elects to interconnect at a tandem, transport and
25 termination costs associated with terminating a CLEC-originated call to a

1 BellSouth end user will apply. Such charges include: (1) tandem switching at
2 the tandem; (2) common transport between the tandem and end office; and (3)
3 end office switching. Obviously, if a CLEC elects to interconnect directly at a
4 BellSouth end office, tandem switching and common transport charges would
5 not be applicable.

6

7 Q. COULD YOU PROVIDE A MORE DETAILED DESCRIPTION OF
8 TANDEM SWITCH FUNCTIONALITIES AS SET FORTH IN
9 GENERALLY ACCEPTED INDUSTRY STANDARDS?J

10

11 A. Yes. BellSouth's network engineering philosophy is compliant with
12 BellCommunications Research, Inc. (Bellcore, now known as Telcordia
13 Technologies) standards. The following information was extracted from
14 Section 4.1.3.3 of a Special Report (ST-2275), Issue 3, December 1997,
15 published by Bellcore to inform the industry of topics discussed in Bellcore
16 Notes on the Networks:

17

18 Tandem switching systems are used to interconnect end offices when
19 direct trunk groups are not economically justified, or when the network
20 configuration indicates alternate routing is economically justified.

21 Tandem offices provide the ability to configure the network
22 economically, act as buffers between different systems, and centralize
23 functions such as billing (which may not be available in all end offices).

24 LEC tandem switching systems perform some or all of the following
25 functions:

- 1 • Interconnect end offices
- 2 • Connect to other tandems
- 3 • Serve as Centralized Automatic Message Accounting (CAMA)
- 4 points for end offices
- 5 • Provide access to interexchange carriers
- 6 • Provide access to operator positions.

7

8 In other words, tandem switching systems perform trunk-to-trunk

9 switching (customer lines are not ordinarily connected to tandems) and

10 generally provide two basic network functions – traffic concentration

11 and centralization of services. As traffic concentrators, tandems allow

12 the traffic of groups of end offices to be economically gathered for

13 delivery between the end offices or to distant points. Also, with

14 tandems, call recording, LATA access, operator services, and signaling

15 conversion functions can be centralized and made economically

16 available to groups of end offices. Proper deployment of tandems is

17 based on the blending of the functional needs and the economics of

18 traffic concentration according to the technical capabilities of the

19 tandems being deployed.

20

21 Q. PLEASE COMMENT ON MR. ROZYCKY'S PROPOSED RATE FOR

22 RECIPROCAL COMPENSATION (PAGE 22).

23

24 A. There is no basis for the Authority to adopt DeltaCom's proposal. Mr.

25 Rozycki has proposed a rate of \$.0045 for the term of the contract. He has

1 provided no cost support for that rate. If DeltaCom wants a rate other than the
2 same rate used by BellSouth, it must support that rate with costs.

3
4 His proposal to reduce the rate by \$.0005 per year until rates equal TELRIC is
5 unnecessary and inappropriate. By this proposal, he acknowledges that his
6 proposed rate exceeds costs. Thus, it cannot be approved under the current
7 FCC rules. This proposed reduction to TELRIC rates is unnecessary because
8 BellSouth has proposed rates equal to TELRIC at the outset. Finally,
9 DeltaCom proposes for these reductions to begin after the contract expires. It
10 is inappropriate to include requirements in the contract that would only apply
11 after the contract expires.

12
13 Q. ON PAGE 21, MR. ROZYCKI ASSERTS THAT DELTACOM SHOULD BE
14 ABLE TO CHARGE BELL SOUTH FOR TANDEM SWITCHING. PLEASE
15 COMMENT.

16
17 If a call is not handled by a switch on a tandem basis, it is not appropriate to
18 pay reciprocal compensation for the tandem switching function. BellSouth
19 will pay the tandem interconnection rate only if DeltaCom's switch is
20 performing both the tandem and end office functions. At present, DeltaCom
21 does not have any switches deployed in Tennessee. In other BellSouth states,
22 DeltaCom's local switches are end-office switches handling calls that originate
23 from or terminate to customers served by those local switches rather than
24 providing the tandem function. DeltaCom is seeking to be compensated for the
25 cost of equipment it does not own and for functionality it does not provide.

1 The Authority should deny DeltaCom's request for tandem switching
2 compensation when tandem switching is not performed.

3

4 Q. HAVE ANY STATE COMMISSIONS IN BELLSOUTH'S REGION
5 PREVIOUSLY RULED ON THE ISSUE OF TANDEM SWITCHING
6 COMPENSATION WHEN TANDEM SWITCHING IS NOT PERFORMED?

7

8 A. Yes. The Florida Public Service Commission, in Order No. PSC-97-0297-
9 FOF-TP, Docket 962120-TP, dated March 14, 1997, concluded at pages 10-11:
10 "We find that the Act does not intend for carriers such as MCI to be
11 compensated for a function they do not perform. Even though MCI argues that
12 its network performs 'equivalent functionalities' as Sprint in terminating a call,
13 MCI has not proven that it actually deploys both tandem and end office
14 switches in its network. If these functions are not actually performed, then
15 there cannot be a cost and a charge associated with them. Upon consideration,
16 we therefore conclude that MCI is not entitled to compensation for transport
17 and tandem switching unless it actually performs each function." Similarly,
18 Florida Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, dated
19 December 16, 1996, states at page 4: "The evidence in the record does not
20 support MFS' position that its switch provides the transport element; and the
21 Act does not contemplate that the compensation for transporting and
22 terminating local traffic should be symmetrical when one party does not
23 actually use the network facility for which it seeks compensation.
24 Accordingly, we hold that MFS should not charge Sprint for transport because
25 MFS does not actually perform this function." Reinstatement of the FCC's

1 rules does not alter the correctness of the Florida Commission's conclusions.
2 The Authority should reach a similar conclusion in this proceeding.

3

4 Q. DID THE CALIFORNIA PUBLIC UTILITIES COMMISSION REACH A
5 SIMILAR CONCLUSION ON THIS ISSUE?

6

7 A. Yes. In a decision dated September 16, 1999, the Public Utilities Commission
8 of California determined in an arbitration proceeding between
9 MFS/WorldCom and Pacific Bell that "a party is entitled to tandem and
10 common transport compensation only when the party actually provides a
11 tandem or common transport function." The California Commission further
12 found unpersuasive MFS/WorldCom's argument that its network serves a
13 geographic area comparable in size to that served by Pacific Bell's tandem
14 switch.

15

16 *Issue 6(a): Pursuant to the definition of parity, should BellSouth be required to*
17 *provide Operational Support Systems ("OSS"), and if so, under what conditions and*
18 *at what rates?*

19

20 Q. ON PAGES 7-16 OF HIS TESTIMONY, MR. WOOD DISCUSSES THE
21 RELEVANCE OF OPERATIONS SUPPORT SYSTEM COSTS AND
22 CRITICIZES BELL SOUTH'S METHODOLOGY. PLEASE COMMENT.

23

24 A. As explained in my direct testimony, the Authority has already addressed the
25 validity of BellSouth charging for access to its OSS electronic interfaces in its

1 January 25, 1999 Order in Docket 97-01262. In the April 20, 1999 Directors'
2 Conference, the Authority clarified that BellSouth shall recover the cost of
3 OSS from all carriers using those systems. Since only CLECs use the
4 interfaces built for CLEC access to BellSouth's OSS, CLECs, including
5 DeltaCom are the parties which should pay for these interfaces. Mr. Wood
6 ignores the fact that the costs BellSouth presented in the Generic UNE Cost
7 docket reflect only those costs directly attributable to establishing interfaces
8 for use by CLECs. As discussed in the rebuttal testimony of Ms. Caldwell,
9 Mr. Wood's statement on page 13 that "the new OSS implemented by
10 BellSouth will benefit its own retail customers" is simply false.

11
12 In this proceeding, BellSouth has proposed that rates for access to BellSouth's
13 OSS to be included in the Authority's final order in Docket 97-01262 should
14 apply retroactively to the effective date of the new agreement with DeltaCom.
15 Additionally, as mentioned in Mr. Rozycki's testimony at page 13, during
16 negotiations BellSouth offered DeltaCom a regional OSS rate proposal. This
17 proposal represents a voluntarily negotiated regional rate, which is only
18 applicable if DeltaCom agrees to the rate on a regional basis.

19
20 ***Issue 6(b): What are the appropriate recurring and non-recurring rates and***
21 ***charges for: (1) two-wire ADSL/HDSL compatible loops, (2) four-wire***
22 ***ADSL/HDSL compatible loops, (3) two-wire SL1 loops, (4) two-wire SL2 loops, or***
23 ***(5) two-wire SL2 loop Order Coordination for Specified Conversion Time?***

24
25 Q. AT PAGES 12-13 OF HIS TESTIMONY, MR. HYDE COMPARES

1 BELL SOUTH'S NONRECURRING CHARGE FOR ADSL WHOLESALE
2 SERVICE TO BELL SOUTH'S NONRECURRING CHARGE FOR ADSL
3 COMPATIBLE LOOPS AND CLAIMS THAT THE UNE RATE IS
4 EXCESSIVE. PLEASE RESPOND.

5
6 A. Mr. Hyde's comparison is inaccurate and irrelevant and his conclusion is
7 incorrect. First, let me explain the difference in BellSouth's ADSL Wholesale
8 Service and the ADSL-compatible loop. BellSouth's ADSL service, contained
9 in BellSouth's FCC Tariff No. 1, is a non-designed interstate transport service
10 which is an overlay to the end-user's existing service, i.e., basic residence or
11 business local exchange service, which the end-user orders and pays for
12 separately. This service does not provide a physical connection from an end-
13 user's premises to the wire center. ADSL service provides the ability to offer
14 high-speed data service over the same line that is used to provide an existing
15 end user's basic local exchange service. BellSouth's ADSL service is offered
16 on a wholesale basis typically to Internet Service Providers ("ISPs"). These
17 ISPs incorporate the high speed data access into their internet service offerings
18 and sell the complete package to their customers. For example, BellSouth.net
19 offers an internet service, including an ADSL service option, for which it
20 charges \$59.95 per month plus nonrecurring charges of \$299.90. The end user
21 obtains voice grade basic local exchange service, vertical features, and access
22 to toll services separately from BellSouth or from a reseller of BellSouth's
23 basic local service.

24
25 By comparison, an ADSL-compatible loop is a physical connection from the

1 BellSouth wire center to the end user's premises that is technically capable of
2 providing both ADSL and basic local exchange service. This loop is an
3 unbundled capability sold to a CLEC. The CLEC generally installs equipment
4 in BellSouth's central office to provide the voice and data service over this
5 loop. A CLEC utilizing an ADSL-compatible loop would provide its end user
6 with basic local exchange service, vertical features, access to toll service, and
7 ADSL service. It is also important to note that a CLEC's purchase of an
8 ADSL-compatible loop ensures that the loop will remain ADSL compatible.
9 With BellSouth's ADSL tariffed service, there is a possibility that certain
10 network reconfigurations could cause the line to lose its ability to support
11 ADSL service. BellSouth does not guarantee that the line will continue to
12 support ADSL service.

13

14 Q. DO YOU AGREE WITH MR. HYDE'S ASSERTION ON PAGE 12 OF HIS
15 TESTIMONY THAT "THERE IS NO DIFFERENCE" BETWEEN AN ADSL
16 COMPATIBLE UNE LOOP AND A VOICE GRADE UNE LOOP?

17

18 A. Absolutely not. Not all of BellSouth's loops are ADSL compatible. ADSL
19 service requires that certain technical standards be met. BellSouth's ADSL
20 compatible loops meet those technical standards while other BellSouth loops
21 may not. Mr. Hyde's assertion ignores the significant factors of service
22 inquiry, design engineering, and connection and testing activities involved in
23 transforming a non-designed voice grade UNE loop into an ADSL compatible
24 loop. In addition, BellSouth will remove load coils from voice grade loops to
25 create an ADSL compatible UNE loop for an additional charge. BellSouth

1 does not offer this function with the ADSL service.

2

3 Q. PLEASE COMMENT ON MR. HYDE'S COMPARISON OF THE RATES
4 FOR THE ADSL SERVICE AND AN ADSL-COMPATIBLE LOOP.

5

6 A. The \$50 installation charge to which Mr. Hyde refers is for overlaying ADSL
7 tariffed service onto the customer's existing facility. That charge does not
8 represent installation of a physical facility. The cost-based non-recurring price
9 for the ADSL-compatible loop recovers the costs associated with service
10 inquiry, service order, engineering, connect and test and travel activities
11 incurred in establishing a facility. Because ADSL-compatible loops are
12 designed, they require production of a Design Layout Record (DLR) as well as
13 involvement of special services work groups. ADSL service does not
14 generally require a premises visit unless the Network Interface Device ("NID")
15 needs to be replaced. By comparison, the ADSL compatible loop offering
16 always requires a designed physical loop facility and always requires dispatch
17 of a BellSouth technician to the customer's premises.

18

19 ITC^DeltaCom has inappropriately attempted to represent one rate element of
20 BellSouth's ADSL tariff offering as an exact substitute for the non-recurring
21 installation rate for an ADSL-compatible loop. This is an apples to oranges
22 comparison. Based on the information presented above, BellSouth requests
23 that the Authority determine that the cost-based rates already in DeltaCom's
24 current agreement be applied currently, to be trued-up per the Authority's final
25 order in Docket 97-01262, and that these rates be applied retroactively to the

1 effective date of the new agreement.

2

3 ***Issue 7(b)(iv): Which party should be required to pay for the Percent Local Usage***
4 ***(PLU) and Percent Interstate Usage (PIU) audit, in the event such audit reveals that***
5 ***either party was found to have overstated the PLU or PIU by 20 percentage points***
6 ***or more?***

7

8 Q. ON PAGE 15, MR. ROZYCKI CLAIMS THAT BELL SOUTH IS
9 INCONSISTENT IN THAT IT IS IN FAVOR OF AN AUDIT "PENALTY"
10 BUT WILL NOT CONSIDER PROVIDING CREDITS OR REFUNDS OF
11 NONRECURRING CHARGES WHEN IT FAILS TO DELIVER SERVICE
12 TO DELTACOM. PLEASE COMMENT.

13

14 A. Mr. Rozycki's statement is incorrect. BellSouth's proposal regarding
15 PIU/PLU audits is that a party found to materially overstate its PIU/PLU
16 percentage (by 20% or more) should pay the costs of conducting the audit, not
17 any punitive damages. Further, in spite of the fact that it is not required,
18 BellSouth has offered to waive nonrecurring charges in several specific
19 circumstances where BellSouth is solely responsible for a failure. This offer
20 was conditioned upon DeltaCom being willing to pay additional nonrecurring
21 charges when it is the sole cause of failure. DeltaCom has objected to having
22 any obligations placed on them and insists on a strictly one-sided contract
23 provision regarding waivers of nonrecurring charges.

24

25 ***Issue 8(b): Should the losing party to an enforcement proceeding or proceeding for***

1 *breach of the interconnection agreement be required to pay the costs of such*
2 *litigation?*

3

4 Q. ON PAGE 15, MR. ROZYCKI STATES THAT A “LOSING PARTY PAYS”
5 STATEMENT IS REQUIRED IN ORDER TO DISCOURAGE FRIVOLOUS
6 COMPLAINTS. PLEASE COMMENT.

7

8 A. A provision to discourage frivolous complaints should provide that if the filing
9 party loses, it pays all legal costs of both parties. DeltaCom has proposed that,
10 regardless of who files the arbitration or the complaint, the losing party must
11 pay. Furthermore, the language requested by DeltaCom is problematic for the
12 following reason. In an arbitration proceeding, there are usually many issues
13 in dispute. It is likely that some issues will be decided in favor of the filing
14 party and some issues will be decided in favor of the non-filing party. It would
15 be almost impossible to determine the overall “winner” and “loser” in such a
16 case. The same could be true, although to a somewhat lesser degree in
17 complaint proceedings. Therefore, BellSouth’s position is that a “losing party
18 pays” clause is not appropriate to include in an interconnection agreement.

19

20 Q. DOES THIS CONCLUDE YOUR TESTMONY?

21

22 A. Yes.

23

24 183160

25

26

AMOUNTS BILLED FROM TENNESSEE CLECS TO BELL SOUTH

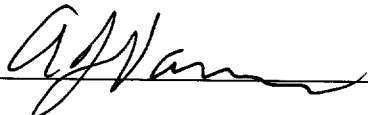
Invoice Date	ISP Usage	Local Usage	ISP MOUs	Local MOUs
Oct-98	\$ 1,954,451	\$ 167,259	162,617,125	70,754,978
Nov-98	\$ 1,179,871	\$ 722,979	180,379,380	67,680,624
Dec-98	\$ 1,355,685	\$ 715,095	190,558,151	68,263,344
Jan-99	\$ 2,438,243	\$ 810,977	222,962,489	72,471,513
Feb-99	\$ 2,677,451	\$ 831,119	285,976,369	74,747,514
Mar-99	\$ 3,437,145	\$ 775,445	262,796,769	83,314,011
Apr-99	\$ 3,400,091	\$ 1,246,555	316,676,993	98,508,260
May-99	\$ 3,802,087	\$ 1,197,313	307,956,890	94,241,887
Jun-99	\$ 3,877,915	\$ 1,439,847	313,052,508	95,677,013
Jul-99	\$ 4,795,676	\$ 854,572	380,103,045	78,437,973
Aug-99	\$ 5,216,126	\$ 822,232	488,707,329	95,228,318
Sep-99	\$ 5,438,726	\$ 694,183	519,162,084	99,632,014
Total	\$ 39,573,466	\$ 10,277,575	3,630,949,132	998,957,449

AFFIDAVIT

STATE OF: Georgia
COUNTY OF: Fulton

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Alphonso J. Varner-Senior Director-State Regulatory, BellSouth Telecommunications, Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 99-00430 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 45 pages and 1 exhibit(s).


Alphonso J. Varner

Sworn to and subscribed
before me this 15th
day of October, 1999


NOTARY PUBLIC

TERESA L. ROCKWELL
Notary Public, Gwinnett County, Georgia
My Commission Expires October 28, 2001